Dec 22. Dismissed no service of citation. Ch J

Bill not filed McMahon v July 56 not filed July 25 (Wm Sk R. 35
Rec'd July 13 56 (same date R 36)

SUPREME COURT OF THE UNITED STATES.

No. ~~264.~~ 179 ~~88~~ 60.
~~57~~ 37.

THOS. J. DAVIDSON, PL'FF IN ER.,

vs.

W. L. LANIER, CURATOR OF JOHN J. McMAHON, DEC'D.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

GEO. S. GIDEON, printer, 511 Ninth street, Washington, D. C.

Bill Petition presented June 15. 1855 (R 4)
Summons issued for 1st Monday (R 16)
Bond in attachment suit June 4 56 (R 11)
Last debt of affr July 3. 56 (R 20)
Summons returned (R 16)
2d affr with Kelly (R 32)
May 1856 - Lee signed deposition (R 27) to cross-interrogatories (R. 27) 3.31
Notice that at office of Pres. Bank Lee's name signed written (R 27)
Trust Deed dated May 56 (R 27)
Att'y Gen'l for Miss. to cross-examine (R 27 31)
Instructions to Commissioner (Sworn R 33)

[illegible]

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Gideon, print.

Exemplification.

W. L. LANIER, Curator,
vs.
THOMAS J. DAVIDSON.

Pleas had at a district court of the United States for the northern district of Mississippi, begun and held at the town of Pontotoc, in and for said district, on the first Monday of June, 1860; present the Honorable Samuel J. Gholson, judge of said court.

Be it remembered, that on the 19th day of May, 1859, W. L. Lanier, curator, sued out of the office of the clerk of the district court of the United States for the northern district of Mississippi his certain summons, in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

The President of the United States to the marshal of the Northern district of Mississippi, greeting:

We command you, without delay, to summon Thomas J. Davidson, a citizen of the said northern district of Mississippi, that he be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of June next, to answer to William L. Lanier, curator of the succession of J. J. McMahon, dec'd, who is a citizen of the State of Louisiana, of a plea of trespass on the case upon promises to the damage of the said plaintiff twenty thousand dollars, and that he do file his plea, or defence, with the clerk of said court, on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness, the Honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1858, and 83d year of the independence of the United States.

Issued the 19th day of May, 1859.

R. W. EDMONDSON, *Clerk.*

Upon which said summons is an endorsement in the words and figures following, to wit:

Action of assumpsit founded on a bill of exchange drawn by J. R. Ferguson, J. Locke, and Thomas J. Davidson, at Memphis, Tenn., July 15th, 1856, on John J. McMahon, New Orleans, La., in favor of James B. Ellis, for $8,992 $\frac{44}{100}$, payable eight months

after date, with 8 per cent. interest after maturity. The amount of said bill of exchange, with interest and protest fees, is demanded.

R. W. EDMONDSON, *Clerk.*

The marshal made his return in the words and figures following, to wit:

Came to hand 26th May, 1859. Executed 1859.

W. H. H. TISON,
U. S. Marshal No. Dist. Miss.

And at the issuance of said summons, plaintiff, by attorney, filed his declaration in the words and figures following, to wit:

Declaration.

District Court, December Term, 1859.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

W. L. Lanier, curator and administrator of the estate of John J. McMahon, dec'd, late a citizen of the State of Louisiana, by attorney, complains of Thomas J. Davidson, who is a citizen of the State of Mississippi, and resident of said northern district of Mississippi, of a plea of trespass on the case upon promises.

For that, whereas the said defendant, by the style of Thos. J. Davidson, together with J. Locke and Jos. R. Furgerson, who are not sued in this action, heretofore, on the fifteenth day of July, A. D. 1856, at Memphis, Tennessee, to wit: at the district aforesaid, made their certain bill of exchange and directed the same to John J. McMahon, New Orleans; meaning thereby, New Orleans, in the State of Louisiana, by which said bill of exchange, the said defendant then and there requested the said John J. McMahon, eight months after the date of that, their first of exchange (second unpaid), to pay to the order of J. B. Ellis, the sum of eight thousand nine hundred and ninety-two and $\frac{44}{100}$, value received, with eight per cent. interest from maturity until paid, and then and there delivered the s'd bill of exchange to the said J. B. Ellis, who then and there endorsed the same by the style "J. B. Ellis, Ripley, Miss.," to Richard M. Kirby, who then and there endorsed the same by the style of Richard M. Kirby, to the plaintiff's intestate. And plaintiff avers that afterward, to wit: when said bill of exchange became due and payable, the same was duly presented to the said John J. McMahon, to whom the same was directed, at New Orleans, Louisiana, for payment, and payment thereof demanded, who then and there refused to pay said bill of exchange, for want of funds of the drawers thereof. And plaintiff further avers, that said bill of exchange was then and there duly protested for non-payment, all of which said defendant had due and legal notice, whereby said defendant became liable to pay to plaintiff's

intestate, in his lifetime, the amount of said bill of exchange; and being so liable, s'd defendant undertook and promised to pay the same. And whereas, also, said defendant heretofore, to wit: on the 18th day of March, 1857, at the district aforesaid, was indebted to said John J. McMahon, dec'd, in his lifetime, in the further sum of eight thousand nine hundred and ninety-two dollars and $\frac{44}{100}$, for so much money paid, laid out, and expended before that time by said John J. McMahon, to and for the use of said defendant, and at his request; and in the further sum of eight thousand nine hundred and ninety-two dollars $\frac{44}{100}$, for money before that time had and received by said defendant, to and for the use of the said John J. McMahon; and in the further sum of eight thousand nine hundred and ninety-two dollars and $\frac{44}{100}$, for so much money found to be due from the said defendant to the said John J. McMahon, upon an account then and there stated between them; and being so indebted, s'd defendant undertook and promised said John J. McMahon, in his lifetime, to pay him said last mentioned several sums of money on request. Nevertheless said defendant although often requested so to do, has not paid said sums of money, or any part thereof, but so to do, he has, hitherto, wholly neglected and refused to pay the same, and still does neglect and refuse to pay the same, to the damage of the plaintiff of twenty thousand dollars. And said plaintiff brings here into court his letters of administration, showing his authority to sue.

FEATHERSTON & HARRIS & GREEN,
For Plaintiff.

Plea in Abatement.

And at the return term named in said summons, defendant, by att'ys, filed his plea in abatement, in the words and figures following, to wit:

United States District Court for the northern district of Mississippi.—June Term, 1859.

W. L. LANIER, curator of J. J. McMahon, dec'd,
vs.
THOMAS J. DAVIDSON.

And the said defendant, by attorney, comes, &c., and for plea says, (actio non, &c.,) because he says that the plaintiff is not curator or administrator of said John J. McMahon, dec'd, by virtue of any letters of administration or of curatorship granted by any court in the State of Mississippi, but that said plaintiff only holds the appointment of curator aforesaid by virtue of letters granted to him by the second district court of New Orleans, in the State of Louisiana.

And the said defendant further avers, that the said plaintiff did

not, before the commencement of this suit, file his letters and bond, or duly certified copies thereof, and also therewith a certificate from the court in which his letters were granted; that the debt sued for in this case is included in the inventory of said plaintiff in the said court where his letters were granted, or that he is there liable for the subject-matter of this suit in the probate court of the proper county of this State; all of which the said defendant is ready to verify. Wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid.

WATSON & CRAFT, and
O. DAVIS, *Atty's for Pl'ff.*

2d Plea.

And the said defendant for a further plea says, (actio non,) because he says that the plaintiff is not curator or administrator of said John J. McMahon, dec'd, by virtue of any letters granted to him by any court in this State, but that said plaintiff only holds the office of curator aforesaid by virtue of letters granted to him by the second district court of New Orleans, in the State of Louisiana. And the defendant avers that the said plaintiff did not, before the commencement of this suit, file in the probate court of the proper county of this State his letters and bond as curator aforesaid, or duly certified copies thereof; and also therewith a certificate from the court in which his letters were granted, that the debt sued for in this action is included in the inventory of said plaintiff as curator aforesaid, in the said court where his letters were granted, or that he is there liable for the subject-matter of this suit, as required by law. On the contrary, the defendant avers that said plaintiff had only filed in the office of the probate clerk of Pontotoc county, in this State, a copy of his letters and bond aforesaid, and also a certificate from the clerk of the second district court of New Orleans aforesaid, to the effect that the plaintiff had filed on his inventory "a second of exchange" of a bill of the parties, dates, and amount of the one sued on in this case; and that the first of this exchange was protested, and is in the hands of Munford & Estis, Memphis, Tenn., for collection.

And the defendant futher avers, that the said John J. McMahon had not, at the time of his death, a mansion-house or known place of residence in the said county of Pontotoc; and he further avers, that said McMahon had not, at the time of his death, nor at the time of the filing the bond, letters and certificate aforesaid, nor at the commencement of this suit, any personal property within the county of Pontotoc aforesaid; all of which the said defendant is ready to verify. Wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid.

WATSON & CRAFT, and
O. DAVIS, *Att'ys for Def't.*

Personally appeared before the undersigned, R. W. Edmondson, clerk of the district court aforesaid, Thomas J. Davidson, and made oath that the matters and facts in the foregoing two pleas are true, as therein stated, as he is informed and believes.

THO'S J. DAVIDSON.
R. W. EDMONDSON, *Cl'k.*

Demurrer and joinder in demurrer, in short by consent.

O. DAVIS & J. W. C. WATSON,
For Def'ts.
J. A. GREEN, *For Pl'ff.*

And afterwards, to wit, on the 14th day of June, 1859, the following proceedings were had, to wit:

Tuesday, June 14th, A. D. 1859, 9th day.

W. L. LANIER, Curator, &c.,
vs.
THO'S J. DAVIDSON.

This day came the parties, by their attorneys, and thereupon came a jury of good and lawful men, to wit, Henry C. Ferris and eleven others, tried, sworn, and empanelled, well and truly to try the issue joined between the parties, upon the first plea in abatement, who, for their verdict, say, they find the issue joined in favor of the plaintiff; it is ordered by the court that the plaintiff recover of the defendant this issue joined; and then came on to be heard the plaintiffs demurrer to the 2d plea in abatement. And it was thereupon ordered by the court that said demurrer be sustained, and leave granted to defendant to plead over to the merits.

Defendant's plea is in the words and figures following, to wit:

United States District Court, at Pontotoc, State of Mississippi.—
December Term, 1859.

W. L. LANIER, Curator and Administrator,
vs.
THOMAS J. DAVID.

And the said defendant, by attorney, comes, &c., and for plea says, actio non, because he says he never undertook or promised in manner and form as the said plaintiff hath above declared against him, and of this he puts himself upon the country, &c.

WATSON & DAVIS,
Atty's for Def't.

It is agreed by the undersigned, atty's on both sides in this case, that under the plea of non assumpsit the defendant may give in

evidence any matter which would be competent under any sworn or special plea.

May 19th, 1859.

MILLER, *Att'y for Pl'ff.*
O. DAVIS, *For Def't.*

Defendant's second plea is in the words and figures following, to wit:

W. L. LANIER, Curator of J. J. McMahon, dec'd,
vs.
THOMAS J. DAVIDSON.

And the said defendant, for further plea, by attorney, comes, &c., and says, (actio non,) because, he says, that the consideration of said bill of exchange sued on is wholly illegal, in this, that during the months from January to July, 1856, one R. M. Kirby, whose name appears as last indorser on said bill of exchange, and divers others, were engaged in trying to erect, establish, institute, and put in operation, a banking concern and office of discount and deposit, in the city of Memphis, in the State of Tennessee, for the issuance of bank bills and doing a general banking business, as a branch or office of the Cincinnati and Little Rock Slate Company. And the defendant avers that neither the said R. M. Kirby, nor the said Cincinnati and Little Rock Slate Company, nor any other person or persons, had any act of incorporation or charter, granted by either the United States or by the State of Tennessee, but were acting in the premises wholly without such act of incorporation or charter. And the defendant avers that the said R. M. Kirby, acting as president of said Cincinnati and Little Rock Slate Company, entered into a contract with said J. J. McMahon, whereby, for the express purpose of aiding the said Kirby and others in erecting, establishing, instituting, and putting in operation said banking office and office of discount and deposit in the city of Memphis, the said McMahon agreed to aid them, and advance them means, by accepting their drafts and bills of exchange, drawn on him in New Orleans. And the defendant further avers, that, in pursuance of such agreement, the said R. M. Kirby, as president of said Cincinnati and Little Rock Slate Company, did draw divers drafts on said McMahon, which were accepted by him, and upon their maturity were paid by him, and so charged up on his books to the said R. M. Kirby, as president as aforesaid. And the defendant further avers that in the spring of 1856 he signed the bills of exchange sued on, while the same was in blank, as to date, time, payable amount, drawee and payee, *whith* any consideration whatever, and entrusted the same, so in blank, to the said R. M. Kirby, who in that condition delivered it into the hands of said McMahon.

And the defendant further avers that the said McMahon, for the

purpose of liquidating and settling his demand against the said R. M. Kirby, as president of said slate company, created in pursuance of his contract aforesaid with said Kirby, filled up the said blank bills of exchange for the amount of the balance of his demand aforesaid against the said Kirby, as president as aforesaid, and for no other consideration whatever.

And defendant avers that said bill of exchange has no other consideration to support it than as above stated; wherefore he says that the same is illegal, as contrary to the declared policy of the State of Tennessee by the acts of the legislature of said State, and therefore void; all of which the defendant is ready to verify, &c. Wherefore, &c.

ALCORN, WATSON, & O. DAVIS,
Att'ys for Def't.

Order at Dec., 1859.

And afterwards, to wit, on the 5th day of December, 1859, the following proceedings were had, to wit:

W. L. LANIER, Curator, &c.,
vs.
THOMAS J. DAVIDSON.

Monday, 1st day; December 5th, A. D. 1859. Cause continued by consent.

Order of June, 1860.

Order of court had at June term, 1860, is in the words and figures following, to wit:

W. L. LANIER, Curator, &c.,
vs.
THOS. J. DAVIDSON.

Tuesday, June 5th, 1860.

This day came the parties, by attorney; and thereupon came a jury of good and lawful men, to wit, John B. Lee and eleven others, tried, sworn, and empanneled, well and truly to try the issue joined between the parties; and thereupon this cause was continued over until to-morrow morning.

W. L. LANIER, Curator, &c.,
vs.
THOS. J. DAVIDSON.

Wednesday, June 6th, 1860.

This day again came the parties, by attorneys; and came, also, the jury of good and lawful men, to wit, John B. Lee and eleven others, who had been tried, sworn, and empanneled on a former day of the present term of this court, well and truly to try the

issue joined between the parties, who, upon their oaths, for their verdict, say they find the issue in favor of the plaintiff, and assess his damages at the sum of eleven thousand three hundred and twelve $\frac{42}{100}$ dollars. It is therefore considered by the court that the plaintiff recover of the defendants the damages by the jury aforesaid assessed, and all costs in this behalf expended.

Motion.

And afterwards, to wit, on the day of June, 1860, motion had in said cause is in the words and figures following, to wit:

W. L. LANIER, Curator, &c.,
vs.
THOS. J. DAVIDSON.

In this cause the defendant having sued out a writ of error to the Supreme Court, he moves the court to grant an order to transmit to the Supreme Court, for their inspection on the trial of said writ of error, the original bill of exchange on which this suit is founded.

J. W. C. WATSON & O. DAVIS,
Att'ys for Defendant.

Order on said motion is in the words and figures following, to wit:

W. L. LANIER, Curator, &c.,
vs.
THOS. J. DAVIDSON.

Friday, June 8th, A. D. 1860.

In this case the defendant having sued out a writ of error to the Supreme Court, he moves the court to grant an order to transmit to the Supreme Court, for their inspection on the trial of said writ of error, the original bill of exchange in which this suit is founded, which motion is sustained by the court, as follows:

Before hearing defendant's motion for an order to transmit the original bill of exchange, on which this suit is founded, to the Supreme Court of the United States, for their inspection on the trial of the writ of error sued out in this case: the court now being of opinion that it is necessary and proper that said original bill of exchange should be inspected in the Supreme Court, upon the trial of said writ of error: It is therefore ordered that O. Davis, esq., one of the counsel for the defendant here, have leave to withdraw said bill of exchange, and to transmit the same, by safe conveyance, to the Supreme Court; and after the trial of said writ of error, the same shall be returned here, and restored to its place in the file.

Bill of Exceptions.

The defendant, before the jury retired to consider of their verdict, rendered his bill of exceptions. Signed, sealed, and ordered to be made a part of the record, which is in the words and figures following, to wit:

W. L. LANIER, Curator, &c.,
vs.
THOS. L. DAVIDSON.

Be it remembered, that on the trial of this cause the plaintiff read in evidence before the jury the bill of exchange in his declaration set out, in the words and figures following, to wit:

Bill of Exchange.

Exch'ge for $8,992 44.

MEMPHIS, TENN., 15*th July*, 1856.

Eight months after date of this our first of exchange (second unpaid), pay to the order of J. B. Ellis, eight thousand nine hundred and ninety-two $\frac{44}{100}$ dollars $\frac{}{100}$, value received, and charge the same to account of your ob't serv'ts, with eight per cent. interest from maturity until paid.

JOS. R. FERGUSON,
J. LOCKE,
THOS. J. DAVIDSON.

To JOHN MCMAHON, *New Orleans, La.*

Upon which said bill are the following endorsements, to wit:
J. B. Ellis, Ripley, Miss.
Rich'd M. Kirby.

It was then admitted by the defendant, that he had received legal notice of the demand and protest of said bill of exchange.

Here the plaintiff rested his case.

Deposition of R. M. Kirby.

And then the defendant read as evidence before the jury the deposition of R. M. Kirby, in the words and figures following, to wit:

In the United States District Court at Pontotoc, Mississippi.

W. L. LANIER, Curator of J. J. McMahon, dec'd,
vs.
JOSIAH LOCKE and THOS. J. DAVIDSON.

Interrogatories to be propounded by defendants to Richard M. Kirby, a witness, who resides in the State of Tennessee, at Memphis:

Int. 1st, by def'ts. Are you acquainted with the parties to this suit?

Int. 2d, by same. Do you or not know of any parties having been at any time engaged in erecting, establishing, or putting in operation any banking institution in the State of Tennessee; if so, state the name of such institution, when and where; who was its president and other officers; and state whether or not said J. J. McMahon, or defendants, had any connection therewith; and if so, state everything you know in relation to the connection of either of said parties therewith, fully and in detail.

Int. 3d, by same. Look upon the copy of the bill of exchange shown to you at the time of taking your deposition, which is a true copy of one of the three bills of exchange sued on in this action, with its filling up and interlineations and indorsements, and state whether or not you know anything in relation to the origin and history of said bills of exchange; if so, state fully, and in detail, all about them.

Int. 4th, by same. If you answer that said bills of exchange were signed in blank, state who was authorized to fill them up; if used, for what amounts; and state whether or not any stipulation or agreement was made between the parties, or inserted in said bills, as to the rate of interest they were to bear after maturity.

Int. 5, by same. State anything else you may know important to either party to this suit.

O. DAVIS,
Att'y for Def'ts.

W. L. LANIER, Curator, &c.,
vs.
JOSIAH LOCKE and T. J. DAVIDSON.

Cross-interrogatories to be propounded to Richard M. Kirby, a witness on behalf of defendants in the above-stated case:

X-intg. 1st. Where did said J. J. McMahon reside and do business at the date of the transaction referred to in your answer to the direct interrogatories?

X-intg. 2d. If you answer defendants' interrogatory that you know anything of the bill of exchange inquired of, state for what consideration said bill was given, who advanced money upon it, or to whom was the money due that it was given to secure?

X-intg. 3d. Was said bill of exchange filled up or in blank at the time it was drawn, and to whom was it delivered after drawn?

X-intg. 4th. Did said J. J. McMahon advance or pay money for defendants, or for defendants, together with others; and if so, at what dates, and to what amounts?

X-intg. 5th. Where did defendants reside, and where was their place or places of business at the time referred to.

X-intg. 6th. State all you know in relation to the drawing of said bill of exchange, the purpose for which it was delivered to said McMahon, and the consideration thereof.

X-intg. 7th. State all you know relative to the matters in controversy in this case.

HUGH R. MILLER,
Att'y for Plaintiff.

UNITED STATES OF AMERICA,
State of Tennessee, City of Memphis.

Be it known, that I, G. P. Fonte, by virtue of the annexed commission to me directed, caused Richard M. Kirby, the witness named therein, to come before me, at my office, in said city of Memphis, State of Tennessee, on this the 29th day of April, 1859, who being by me first duly sworn, testified as follows, to wit:

To the 1st interrogatory he answers:

Ans. 1. I am.

Ans. 2. I moved to Memphis in November, 1855. About the first of January, 1856, I become connected with the Cincinnati and Little Rock Slate Company, the object of which company was to do a banking business in the city of Memphis, Tennessee. I was soon after my connection with the institution chosen as its president, and H. M. True was chosen the secretary and cashier for the company in the city of Memphis. The company *nedded* funds and financial facilities. I went to New Orleans for the purpose of making suitable arrangements for the interest of the company, and explained our plan to J. J. McMahon, who agreed our drafts or bills at different times, to aid us in our In pursuance of that agreement, I drew divers of drafts L. D. Stickney, H. M. True, and Jos. R. Ferguson, accepted by the said McMahon, and at the same time mittances to him at divers times till the early part of th when our indebtedness to him on this act amounted about eleven thousand dollars.

In consideration of the above acceptances, the company was pay McMahon his usual charges for accepting for us; also to act as our agent for the redemption of the money or issues of the company in New Orleans, and also to use the money or issues of the company to advance on or buy cotton on Red river. In pursuance of this agreement, I sent him twelve thousand dollars of the issues of the company to perfect the agreement, which he told me subsequently he made an effort to use.

J. Lock was a member of the company when I become connected with it. Thos. J. Davidson became connected with the company some time in February, 1856; I think about the middle. Davidson was connected with the company as a stockholder; he bought five thousand dollars of the stock. Some few months after taking this stock, Davidson and Dr. J. B. Ellis, who was a stockholder to the same amount, and taken at the same time with Davidson, become dissatisfied, and requested to withdraw from the

company, and requested me to give them up their notes which they had given for their stock, and had not paid. In compliance with their request, I gave them up their notes.

Answer 3d. I know about the making of the bills of exchange; it occurred as follows: After Davidson and Ellis withdrew from the company, it was necessary for the company to raise money, or have a certainty of obtaining it, to protect the circulation. It was agreed that six thousand dollars would be sufficient for any emergency; the bills were signed in blank by the parties, to be filled up and used at my discretion, supposing that it would only be necessary to use them one thousand dollars at a time. After this arrangement, it became necessary for me to be absent for some time on business of importance for the company. On my return I found that H. M. True, the secretary and treasurer of the company, had *stold* from the company a large amount of money from the company; and not knowing at that time how our account stood with McMahon, I sent him the blank bills, hoping he might be able to protect himself against the amount which he had accepted for the company, the proceeds of which had been stolen from the company by True.

Answer 4. They were signed in blank, except the engraving; I was authorized to fill them up for one thousand dollars each; there was no agreement made between the parties nor inserted in those bills, as to the rate of interest they were *bare* after maturity.

Answer 5. I believe I have answered everything that I know that would be of importance to either party in this suit.

Answer to cross-interrogatories.

Ans. 1. J. J. McMahon did business in New Orleans, La., as a commission merchant.

Ans. 2. After T. J. Davidson and J. B. Ellis withdrew from the company, they agreed to loan me their credit for the purpose of aiding me to protect the credit of the company, in consideration of which they signed the bills in blank for six thousand dollars, and left them with me, to be used as stated in third interrogatory. Nobody advanced money on these bills at the time the bills were signed and left with me. I know of no special debt against the company; they were more particularly given to guard against sudden emergencies in protecting the issue of the company.

I kept the bills some time in my possession, and after finding that the company had been robbed, and being satisfied the company was owing McMahon a debt, the am't I did not know at that time, I sent him forward the bills, being the only security I had to offer him as *as* protection against a loss.

Ans. 3. They were in blank, except the engraving, and were delivered to me.

Ans. 4. McMahon advanced money for the slate company, as

stated in the account rendered by Jones, to which I ref and dates.

Ans. 5. The defendant resided and did business in

Ans. 6. I refer to my previous answers.

Ans. 7. I believe I have answered all I know of importance to this suit.

Interrogatories propounded by pl'ffs in chief, by consent.

Q's. 1st. To what am't, and in what way was McMahon interested in Cincinnati and Little Rock Slate Company, and why did he accept the bills of exchange sued on?

Ans. 1. In my second answer in chief, I have explained McMahon's connection with the company, and the reason he gave his acceptances.

Q's. 2. Was there any money, notes, or other effects or accounts placed by you in the hands of any one for the payment, or part payment, of the debts due McMahon, with the knowledge or consent of any of the parties belonging to the C. and L. S. Co.? If so, where placed, and by whom, and to what am't, and give a history of the transaction; if the other members, defendants, knew nothing of it at the time, afterward, and when def'ts had found out what you had done with the claims so placed, did they object or recognise it?

Ans. 2. After the failure of the company I placed in the hands of J. Locke a government claim for about seven thousand dollars, which was to be paid by a party in Little Rock, Ark. Lock proposed to go to Little Rock and collect the money, and after paying twenty-five hundred dollars to A. C. Blair, the ballance was to be paid to J. J. McMahon. Locke disposed of the claim; how much money he received on the claim I know not, but full satisfied he has never paid over any of the proceeds of the claim as he promised. None of the other members of the company knew anything of the transaction until after Lock had disposed of the claim and had failed to pay over the money as promised. The other members of the company did not object to my having placed the claim in Lock's hands, and believed he would pay over the money, as he frequently promised, to McMahon.

Int. 3d. In the passing of the claim out to Lock, and having charge of the blank bills of exchange, did you act as president of the co., or in what capacity were you acting, and was it in the usual mode of transacting business for the co.; where is this Lock, and what connection had he with the company?

Ans. 3. I was the representative of the company; the claims and effects of the company were left in my hands for the purpose of collecting, and liquidating the indebtedness of the company. Lock lived at Friar's Point, Mississippi; I understand he is now dead; he was one of the company, and proposed to aid me in col-

collecting the claims to pay the indebtedness of the company, was the reason I gave the claims to collect; and further this deponent saith not.

RICH'D M. KIRBY.

It is agreed that the questions and answers by pl'ff may be read in the trial of this cause.

Memphis, Tenn., Ap'l 29th, '59.

O. DAVIS,
Att'y for Def't.

I, G. P. Fonte, the commissioner in said commission named, hereby certify that the evidence of the witness, Richard M. Kirby, was taken under oath as hereinbefore set forth, and was reduced to writing by said witness himself, and subscribed by him in my presence, on the day and at the place named in the caption.

Witness my hand and seal this 29th day of April, A. D. 1859.

G. P. FONTE, [SEAL.]
Com'r, &c.

Defendant then read as evidence before the jury the deposition of D. H. Jones, in the words and figures following, to wit:

In the Circuit Court of Tippah county, Mississippi.

W. L. LANIER, Curator of J. J. McMAHON, dec'd,
vs.
JOSIAH LOCKE, THOMAS J. DAVIDSON, JAMES B. ELLIS.

Deposition of D. H. Jones.

Interrogatories to be propounded to D. H. Jones, on behalf of defendants:

1st. Are you acquainted with the parties, or any of them, to this suit; if so, which?

2d. Where do you now reside, and what is you present occupation?

3d. Where did you reside, and what was your occupation, during the years 1856 and 1857?

4th. Look upon the bill of exchange shown to you, at the time of taking your deposition, signed by Thos. J. Davidson, J. Locke, and Jos. R. Ferguson, as drawers, payable to the order of J. B. Ellis, drawn on J. J. McMahon, and state whether or not you ever saw the same before; and if so, when and where, and in whose hands; and if you saw it more than once, in whose hands you saw it at different times.

5th. State, if you know, in whose handwriting the filling up of said bill is, that is, all those portions of it written with a pen, and not engraved.

6th. If you state that you yourself filled up the written portions of said bill, state upon whose instruction and authority the same was done; and if not done by J. J. McMahon, dec'd, was it or not done by him, or on his behalf, and for his benefit?

7th. State whether or not other bills bearing the same signatures and indorsements as the one shown to you, were filled up at the same time; if so, how many, and what amounts. Was there or not one for $8,992 44, and three for $1,000 each, including the one shown to you filled up at the same time?

8th. Did or did not any of said bills have anything upon them except the engraved portions and the written signatures, when you first saw them? If you cannot answer as to all, answer definitely as to the one shown to you.

9th. State if you know how J. J. McMahon first come into possession of said bills of exchange, while they were blank; did he or not receive them from any party whose name appears on them; if so, which party; were they delivered to him personally, or were they received in a letter? State all you know or have learned from said J. J. McMahon on this subject, as to how and from whom he first received them.

10th. If not already stated by you, state now, if you know, whether or not said bills of exchange were or were not filled up to cover and discharge an account held by said J. J. McMahon against R. M. Kirby, either in his individual capacity or as president of the Cincinnati and Little Rock Slate Company, or both, for bills accepted and paid by said J. J. McMahon, or for money advanced to said Kirby, or both; and if not for this, for what purpose were said bills filled up?

11th. Have you or not, now, the custody and charge of the books and papers, or a portion of them, of said J. J. McMahon, dec'd; if so, do said books or not contain the amount of said J. J. McMahon against said R. M. Kirby, for the year 1856? If so, annex a copy of said account, as it stood at said McMahon's death, or as it now stands, giving the whole account, including all debts and credits, with the dates of each. This inquiry extends to both the individual account against said R. M. Kirby, and to the account against him as president of the Cincinnati and Little Rock Slate Company or in any other capacity in which said Kirby may have an account on said books.

12th. If you have answered that you have in your custody or keeping any of the papers of said J. J. McMahon, dec'd, are the original bills of said R. M. Kirby, either individually, or as president, as before stated, referred to in the account, referred to in the last interrogatory or not; if so, file said original bills or copies of them with your deposition.

13th. At what time were said bills of exchange, including the one shown to you, filled up? was it or not in March, 1857; or if not then, when was it, as near as you can ascertain or remember?

14th. Had you at any time, or have you now, access to the letter book of said J. J. McMahon, containing copies of business letters sent by him; if so, did he or not, in January or February, 1857, address a letter to defendants or to some of them, notifying them that he would in a certain contingency fill up the blank bills of exchange then in his possession. If any such letter was written, annex a copy of it, if you can, to your deposition; and please examine the files of letters addressed to said McMahon, and find the answer of defendants, or any of them, to said letter, and annex the same or a copy of it to your answer; and if you cannot identify it as the answer to the letter spoken of, annex any letter or copies of letters addressed by any of defendants to said McMahon, dated in January or February, 1857.

15th. Referring to the bill of exchange shown to you, look particularly at the words "with eight per cent. interest, from maturity, until paid," and state if you know in whose handwriting the same is written, and by whose instructions and authority the same inserted in said bill. Were either of the defendants, or not, present, consenting to or affirming the same?

16th. If in answer to the 9th interrogatory, you have stated that the blank bills of exchange referred, were received by said J. J. McMahon, in a letter, please annex said letter, or a copy of it, to your deposition.

17th. Who else, besides yourself, were book-keepers, clerks, or agents of said J. J. McMahon, in the year of 1856, and 3 first months of 1857, and where do they now reside?

J. L. ALCORN, WATSON & CRAFT,
J. W. THOMPSON & O. DAVIS,
Att'ys for Def'ts.

To the 1st interrogatory. "I am acquainted with W. L. Lanier, and knew J. J. McMahon for several years prior to his demise."

To the 2d interrogatory. "I reside in New Orleans, and am an accountant and book-keeper."

To the 3d interrogatory. "I reside in New Orleans, and at the period, was an accountant, clerk, and book-keeper for J. J. McMahon."

To the 4th interrogatory. "I have seen the bill before; I saw it first in March, (the 18th,) 1857, in the office of said J. J. McMahon; I saw it in the hands of Mr. McMahon; afterwards it was in my hands; I have seen it many times since; the last time I saw it, was when I enclosed it to Mess. Munford & Estis, at Memphis, Tenn., on or about the 24th of September, 1857. The various times I have seen it were, when it was in possession of Mr. McMahon, and subsequently of Mr. Lanier, his curator."

To the 5th interrogatory. "The said bill, with the exception of the figures '$1,000,' on the upper left hand margin, and the signa-

tures and endorsements, and the engraved portion of it, is in my hand writing, and was filled up by me, and is in my usual handwriting."

To the 6th interrogatory. "I filled up the said bill as said above, by and in conformity with Mr. McMahon's instructions, and his authority."

To the 7th interrogatory. "I filled up at the same time three other bills of exchange, bearing the same signatures and endorsements, to wit: Two for $1,000 each, and the other for $8,992 44. The two of $1,000 each, had the figures $1,000 on the upper left hand margin, and were signed and endorsed. The other one for $8,992 44, was filled up by me, and had only signatures and endorsements on it."

To the 8th interrogatory. "I refer to my answers to the 6th and 7th interrogatories."

To the 9th interrogatory. "I was informed by Mr. McMahon, on the 18th of March, 1857, that he had received the above and before mentioned drafts or bills of exchange from the assignee or assignees of the Cincinnati and Little Rock Slate Company; that they were given him for the purpose of securing him, and paying him a debt due him by said company. That the parties signing said bills were either the assignees or the largest stockholders, and were solvent persons. That the reason the bills were forwarded, and drawn in blank, was because the exact amount due and owing him by the said company was not accurately ascertained and known at the time the bills were drawn and received; and I do not know how McMahon received these bills, whether by letter or otherwise."

To the 10th interrogatory. "The bills were filled up to cover the indebtedness the 'Cincinnati and Little Rock Slate Company,' represented by R. M. Kirby, president, to J. J. McMahon. The account of said company was kept on the books of said McMahon, under the style of 'R. M. Kirby, president Cincinnati and Little Rock Slate Company', and embraced no individual transactions of said Kirby, for the years 1856 and 1857; a copy of said account I attach hereto, marked Exhibit A, and make it part of my answer to this interrogatory."

To the 11th interrogatory. "In my capacity of book-keeper for W. L. Lanier, curator of the estate of said McMahon, I have access and charge of the books of the latter, and to his papers, &c. The only account against R. M. Kirby, individually, on the books of said McMahon, is that copy of which I annex, as Exhibit B, and make it part of my answer hereto. I refer to the Exhibit A annexed in answer to interrogatory 10th, and refer to same in part answer to the present interrogatory."

To the 12th interrogatory. The bills referred to are not in my charge; I think they were sent by Mr. McMahon, or left by him

to, or at Memphis, Tenn., with Munford & Estis. I do not recollect *wherth* Kirby signed them as president, or individually."

To the 13th interrogatory. "The four bills of exchange were all filled up by me, as said, on the 18th of Ma'ch, 1857.

To the 14th interrogatory. "I have access to the letter books of said McMahon, and in answer and compliance with this interrogatory, annex the exhibits respectively marked C, D, E, F, G, and H, all of which are copies, except G and H, the latter of which was received since the death of Mr. McMahon. These two letters, G, H, are all that I can find that were written by defendants.

To the 15th interrogatory. "The words 'eight per cent. interest from maturity until paid,' were filled in by me, by directions of Mr. McMahon; none of the defendants were present."

To the 16th interrogatory. I refer to my answer to said 9th interrogatory.

To the 17th interrogatory. "George W. Points, Joseph H. Lyons, jr., and myself, were in the employ of Mr. McMahon during the year 1856, and continued in his employ up to the 3d June, 1857, the time of his demise."

DAVID H. JONES.

Exhibit A.

Copy 1st acc't ren'd.

R. M. Kirby, Pres't, in acc't with J. J. McMahon.

1856.						Days.	Interest.
Jan'y	31.	To accept'e d'ft favor	L. D. Stickney, pay'e	15–18 M'ch...	1,000 00	107	$23 78
"	"	" do.	do.	18–21 " ...	1,000 00	104	23 11
"	"	" do.	do.	15–18 April..	1,000 00	76	16 89
"	"	" do.	do.	18–21 " ..	1,000 00	73	16 24
"	29.	" cash p'd H. M. True, dft. *a* sgt., Feb'y 8th.....			250 00	146	8 11
Feb'y	8.	" L. D. Stickney, dft. *a* sgt., on act. 96 B. C., p'd 15 Feb'y.			1,000 00	139	30 88
"	23.	" do.	for J. R. Ferguson, due	24–27 M'ch.	2,500 00	98	54 44
M'ch	3.	" accept'e d'ft favor	L. D. Stickney, due	17–20 April	1,000 00	74	16 44
"	"	" do.	do.	17–20 "	1,000 00	74	16 44
"	5.	" do.	do.	4–7 May	1,000 00	57	12 67
"	7.	" do.	do.	21–24 April	1,000 00	70	15 56
"	29.	" do.	do.	28–31 May	1,000 00	33	7 33
April	7.	" do.	do.	22–25 May	5,000 00	39	43 33
"	16.	" do.	do.	16–19 May	1,000 00	45	10 00
"	23.	" do.	do.	23–26 "	1,500 00	38	12 67
	1.	" do.	do.	30–3 July	3,000 00		
Feb'y	18.	" cash p'd you.....			50 00	136	1 51
April	5.	" " redeemed from G. C. Blount.....			100 00	89	1 98
May	26.	" " p'd for dispatch.....			1 60		
June	2.	" " do.			1 50		

					Days.	Interest.
May	26.	To refunded protested P. O. d'ft		$1,314 63	38	$11 10
"	1.	" commissions for accepting $22,000, *a* 2½ p. c.		550 00		
July	1.	" do. for advancing $24,417 73, *a* 2½ p. c.		610 44		
"	3.	" balance interest ac. to date pr. margin		74 40		
				$25,952 57		$322 46

CREDITS.

							Days.	Interest.
Feb'y	5.	By cash check			$300 00		149	$9 53
April	3.	" "			600 00		138	18 40
"	4.	" "			1,000 00		137	30 44
May	10.	" P. O. d'ft			1,299 72		54	15 60
M'ch	25.	" proceeds 96 b. cotton			4,033 60		100	89 64
"	"	" do.	30	do.	1,162 66		100	25 83
May	23.	" do.	12	do.	580 51		41	5 28
"	"	" do.	57	do.	2,713 73		42	25 34
"	"	" do.	63	do.	2,957 45		42	27 60
						14,647 67		248 06
E. & O. E.		Due J. J. McMahon				$11,304 90		
		Bal. to debit						74 40
								$322 46

July 3d, 1856.

Copy of 2d Ac't.

R. M. Kirby, Pres't, in ac't with J. J. McMahon.

1856.					
July 3.	To balance pr. ac't ren'd				$11,304 90
	CREDITS.				
" 15.	By J. R. Ferguson, J. Locke, and Thos. J. Davidson, d'ft on me, pay'e 15–18 M'ch, '57			$1,000 00	
"	do.	do.	do.	1,000 00	
"	do.	do.	do.	1,000 00	
"	do.	do.	do.	8,992 44	
				11,992 44	
	Less 258 days int. ac., *a* 8 p. c., (off.)			687 54	
					11,304 90

(Note.) To be charged in addition, omitted in former ac., fr't paid on $10,000 bank notes in p'k'ge, $25.

EXHIBIT B.

R. M. Kirby, Esq., in ac't with J. J. McMahon.

1855.			
Jan'y 19.	To cash bal'c. due this day		$806 38
Dec. 28.	" H. Thorn's d'ft, due 7th Ap'l, '55		412 39
	" commission for accepting, 2½ p. c.		10 31
	" do. advancing "		10 31
	" interest to Aug'st 15, '55		49 43
			1,288 82

CREDITS.

April	3.	By am't p'd E. S. McMahon	$150 00	
		Interest to August 15th	4 40	
				154 40
				1,134 42
		Interest to 15th Feb'y, 1856		39 44
				1,173 86
Aug'st	15.	By draft favor H. Thorn, payable 15 Feb'y, '56		$1,173 86

R. M. Kirby, Esq., in ac't with J. J. McMahon.

1855.			
Aug'st	15.	To d'ft favor H. Thorn, payable 15th Feb'y, 1856	$1,173 86
		" " dated Nov. 10th, 1854, *a* 4 mos. date, due 10th M'ch, 1855	550 00
		" " dated 25 July, 1855, for D. J. Connon, due 25-28 Jan'y, 1856	530 00
1856.			
Jan'y	31.	" cash p'd dispatch	2 20
Feb'y	19.	" invoice	4 20
May	2.	" cash p'd for repairing watch	3 00
"	26.	" " dispatch	1 50
"	"	" " do.	1 60
		Balc. due J. J. McMahon	$2,266 36

Exhibit (Copy) C.

NEW ORLEANS, *Feb'y* 4, '57.

Messrs. DAVIDSON & ELLIS:

GENT: Your favor 17th Jan'y only came to hand by this morning's mail. When we had the interview at Memphis, you admitted that the drafts sent me were only to be used for $6,000. I can prove by Mr. Kirby that they were sent to me to raise the money upon to place me in funds. I will let the paper go to protest, and we will then have to law it. I will sue upon the notes issued, as well as the drafts, and prove that you were stockholders.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit (Copy) D.

NEW ORLEANS, *Feb'y 9th*, '57.

Col. J. LOCKE:

D. SIR: After waiting until my patience has become exhausted, I have concluded to send up one of my young men, Jos. H. Lyon, to collect the am't of the A. C. Blair draft, also all you intend paying on the debt against Davidson & Ellis, Kirby and yourself, for which funds were placed in your hands last June. I want every dollar you can raise, either in money, cotton, or good drafts. I must have these matters closed. I want the money badly, and if not arranged now, I must put the claim in suit. I think it best to speak candid, and if you cannot arrange the amount you have in your hands at home, and can do so by coming to the city, come down with Mr. Lyon. From what Kirby says, you must have some $5,000 or $6,000, beside the Blair draft.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit (Copy) E.

NEW ORLEANS, *May* 4, '57.

Doct. J. B. ELLIS:

D. SIR: Your favor 27th April is just to hand. Locke was here some time ago; denied that any claims had been put in his hands to apply to the debt due me; promised to call and arrange the am't due by Col. A. C. Blair; failed to do so; left the city without my seeing him again. Nothing has been paid on my ac. against R. M. Kirby, as pres't; some $11,000 due on that score; sent part, say $8,000, to sue upon.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit (Copy) F.

NEW ORLEANS, *May* 20, '57.

Doct. J. B. ELLIS:

D. SIR: I have written to Locke, through a friend, if he would pay $3,000, with 8 p. c. int'st, from 18 March, that I would release him from the debt, so far as I am concerned. I make the same proposition to you and Mr. Davidson: each of you pay or secure me in the payment of $3,000 ea., with 8 p. c. in'st, and I will release you from the balance of the debt. If you accept the proposition, address Messrs. Munford & Estes, of Memphis, who have the claim for collection.

Very respectfully,

(Signed) J. J. McMAHON.

Exhibit G.

RIPLEY, MISS., *April* 27, 1857.

Col. J. J. McMAHON:

DEAR SIR: Has Locke fixed up the matter he promised? Have you heard from him? What is he intending to do, and how does the matter stand? I called at your office once, on Camp street, and intended to call again and see you, but the last half day I had I expected to be at leisure, but was very busy. I calculate to be down again this spring or summer, and will call.

Very truly,

J. B. ELLIS.

Exhibit H.

FRIAR'S POINT, *June* 5, '57.

J. J. McMAHON, Esq., *New Orleans:*

DR. SIR: Your favor of the 20th ulto. to my friend, C. Bobo, is before me, and I am really surprised. Will you do me the favor to advise me of now many d'fts in your possession that my name is on, and what the am't of each one is? Please let me hear from you, for I am not an unreasonable man.

Very truly,

J. LOCKE.

Deposition of L. D. Stickney.

The defendant then read in evidence before the jury two depositions and exhibits thereto of L. D. Stickney, in the words and figures following, to wit:

In the Circuit Court of Tippah County, Mississippi.

W. L. LANIER, Curator of J. J. McMahon, dec'd,
vs.
THOMAS J. DAVIDSON, JAMES B. ELLIS, JOSIAH LOCKE.

Interrogatories to be propounded to L. D. Stickney, a witness on behalf of defendants, who resides in the State of Tennessee:

Intg. 1st, *Intg.* 1*st*, by def'ts. Are you acquainted with the parties to this suit?

Intg. 2d, by same. Do you or not know of defendants having at any time been engaged in erecting, establishing, or putting in operation any banking institution or office of discount or deposit; if yea, in what State and where, and what was the name of such banking institution, or office of discount or deposit; did it have a president and cashier; if so, what were their names?

Int. 3d, by same. State whether or not said J. J. McMahon ever had anything to do with said slate company, or any connection or business transaction with it; if so, state fully and in detail all you know about it.

Intg. 4th, by same. Look upon the bill of exchange accompanying these interrogatories, and of which the following is a copy, viz:

Exch'ge for
$8,992 44.

MEMPHIS, TENN.,
15*th July*, 1856.

Eight months after date of this our first of exchange (second unpaid) pay to the order of J. B. Ellis eight thousand nine hundred and ninety-two $\frac{44}{100}$ dollars $\frac{}{100}$, *vaue* received, and charge the same to account of with eight per cent. interest from maturity until paid.

JOS. R. FERGUSON,
J. LOCKE,
THOMAS J. DAVIDSON.

To JOHN J. MCMAHON,
Mew Orleans, La.

Endorsed: J. B. Ellis, Ripley, Miss.; Rich'd M. Kirby.

And state if you know anything of the origin and history of said bill of exchange; and if so, all you know in relation thereto.

Intg. 5, by same. Did you or not ever hear any conversation between the said John J. McMahon and any of these defendants in relation to said bill of exchange? If so, state when and where, and all that was said between them in relation thereto, as near as you can now remember.

Intg. 6, by same. Did you or not ever see any letter from said John J. McMahon to any of the defendants in relation to said bills of exchange? If so, state the date and substance of the same; give the words if you can do so.

Intg. 7, by same. If you have not already done so, state, if you know, whether or not said J. J. McMahon, when he advanced money to, or accepted bills for the benefit of said slate company, had any knowledge or understanding of the use intended to be

made of the money advanced by him, on the purposes to which the same, and the proceeds of bills accepted by him, were to be applied, and all you may know on that point.

Int. 8th, by same. State if you know whether the said Cincinnati and Little Rock Slate Company ever had any charter granted by the United States, or by the State of Tennessee.

Int. 9, by same. At the time said bills of exchange were signed in blank, was there any stipulations in them or any of them as to the rate of interest they were to bear after maturity? State all you know on that point.

Int. 10, by same. State anything else you may know important to either party in this suit.

WATSON & CRAFT,
J. L. ALCORN,
J. W. THOMPSON, and
O. DAVIS,
Att'ys for Def'ts.

Cross-interrogatories by Plaintiff.

Cross-int. 1st. Are you interested in the result of this suit either directly or indirectly?

2d. If in answer to defendants' 2d interrogatory you say that you do know of defendants having been engaged in *recting*, establishing, or putting in operation any banking institution, &c., state the means of your information, and whether or not you were ever in anywise connected with said banking institution, and in what way you were connected, if at all.

3d. If McMahon had any connection with the s'd slate company, state fully and precisely what that connection was; if arising out of any argreement, state with whom the agreement.

4th. State, if you know, for what purposes the money that was obtained upon the bill of exchange, of which there is a copy in defendants' direct interrogatory, was used, and by whom, when, where, and particularly if you know whether it was used by the company for its own benefit, or by the defendants for their individual benefit.

5th. If you ever heard any conversation between McMahon and any of the defendants, state which one of them it was with, and whether previous to or after the date of the bill of exchange.

6th. If there was any stipulation between defendants, or any of them, and plaintiff as to the rate of interest to be paid by defendants, state with what one of the defendants the stipulation was made, and the means of *you* knowledge, together with all and everything you may know in reference to it.

FEATHERSON & HARRIS, and GREN,
For Plaintiff.

Filed 19 June, 1858.

R. J. THURMOND, *Cl'k.*

W. L. LANIER, CURATOR OF J. J. MCMAHON, DEC'D,
vs.
THOMAS J. DAVIDSON, JAMES B. ELLIS, JOSIAH LOCKE.

Answer of L. D. Stickney to interrogatories propounded by defendants in this case.

Answer 1st. I know the defendants, but do not know Lanier; was acquainted with McMahon in his lifetime.

Answer 2d. The defendants were engaged in establishing, in putting in operation a banking institution in Memphis, State of Tennessee, by the name of the Cincinnati and Little Rock Slate Company. R. M. Kirby was president; no cashier was provided by the charter.

Answer 3d. J. J. McMahon had the charter submitted to him by R. M. Kirby, and agreed to act as treasurer of said Cincinnati and Little Rock Slate Company at New Orleans, State of Louisiana.

In pursuance of that arrangement, the office of treasurer, for redemption of the notes of said slate company in New York was abolished, and the steel-plates on which said notes were printed was altered and new notes struck, which were redeemable at the office of J. J. McMahon in New Orleans. The notes were in the form of drafts, like the notes of the Northern Bank of Mississippi; J. J. McMahon's name engraved on them. McMahon proposed to use these notes on Red river, in the purchase of cotton, where, under the sanction of his name, they would circulate freely. The proceeds of bills drawn at Memphis on McMahon all passed into the hands of H. M. True, who was then acting as financial agent of said slate company. Mr. Kirby directed that the said proceeds should be invested in cotton and shipped to McMahon, to meet the bills as they matured. Being then a stockholder, and acting under the advice of Kirby, I made purchases of cotton, as will appear by the accounts of sales herewith filed: one of twelve bales, one of fifty-seven bales, and one of sixty-three bales; also, a letter of McMahon, showing account sales of ninety-six bales purchased with said proceeds. My agency was merely nominal; the bill of lading was in my name, and the account sales rendered in conformity thereto, but the transaction was in fact that of the slate company. I received no commission or any pecuniary consideration for my trouble. The remainder of the proceeds was stolen by True.

Answer 4th. J. R. Ferguson, J. Locke, and Thos. J. Davidson signed a blank bill of exchange in my presence, some time in May, 1856, I think, and J. B. Ellis and R. M. Kirby endorsed it. This was done at the suggestion of Kirby, to relieve McMahon from True's theft. I do not recollect any specific amount being named to insert in the body of the bill, nor was anything said about in-

terest at that time. I was not a stockholder; I had disposed of my stock, and published in one of the Memphis newspapers that I had no interest in or connection with said slate company. There was a large amount of the notes of said circulation which Mr. Kirby redeemed.

Answer 5th. I did not.

Answer 6th. I have no recollection about any.

Answer 7th. He was fully advised about the slate company, and its operations before he advanced any money on account of it.

Answer 8th. It had no other charter than that granted by the legislature of the State of Arkansas.

Answer 9th. There was not.

Answer 10th. I recollect nothing further, except R. M. Kirby placed about twelve thousand dollars of the notes of said slate company in the hands of McMahon for circulation. This was done before any bills were paid by McMahon on account of said slate company.

EXHIBITS.

Sales of 63 *bales cotton, rec'd p'r "Belfast" by J. J. McMahon, p'r acc. of L. D. Stickney, Esq.*

U X lbs.	486	521	514	518	459	473	484
	518	530	512	416	487	497	485
	514	517	448	472	447	521	483
	506	416	513	416	477	505	
	514	499	486	496	423	440	1,452
	484	483	483	483	485	491	4,801
	516	490	509	497	470	449	4,682
	502	480	514	490	471	478	4,775
	489	499	480	500	471	492	4,947
	480	408	488	487	492	455	4,843
							5,009
	5,009	4,843	4,947	4,775	4,682	4,801	30,509

Say 63 bales, weighing 30,509 lbs., *a* 10½..... $3,203 44

Charges.

Freight, *a* $1 25.....	$78 75
River insurance on $50 per bale, *a* ¾ p. ct.....	23 63
Fire insurance on $3,203 44, 1 p. ct.....	32 03
Drayage, storage, labor, and weighing, 50.....	31 50

Commissions on $3,203 44, *a* 2½ p. ct.....	80 08	
		245 99
Net proceeds.....		2,957 45

E. E.

J. J. McMAHON,
By G. W. POINTS.

New Orleans, May 22d, 1856.

Sales of 57 *bales of cotton, rec'd p'r H. R. W. Hill, by J. J. McMahon, p'r acc. of L. D. Stickney, esq.*

A X	lbs. 497	490	508	664	484	415	
	453	483	507	549	475	484	
	425	474	502	610	402	470	
	408	496	430	430	528	520	
	460	490	501	517	447	475	
	443	473	469	436	420	439	
	477	423	500	439	430	405	4,656
	390		515	497	449	478	4,681
	422	3,329	520	435	545	459	5,096
	487	4,462	470	519	501	511	4,922
	4,462		4,922	5,096	4,681	4,656	
		7,791					19,355

Say 17 bales, weighing 7,791 lbs., *a* 11c...	857 01	
" 40 " " 19,335 lbs., *a* 10¾c.	2,080 66	
		$2,937 67

Charges.

Freight, a $1 25.....	$71 25	
River insurance on $50 per bale, *a* ¾ p. ct.	21 38	
Fire insurance on $2,937 67, *a* 1 p. ct.....	29 37	
Drayage, storage, labor, and weighing, 50	28 50	
Commissions on $2,937 67, *a* 2½ p. ct.....	73 44	
		223 94
Net proceeds.....		$2,713 73

E. E.

J. J. McMAHON,
By G. W. POINTS.

New Orleans, May 22d, 1856.

Sales of 12 *bales cotton rec'd per Belfast, and sold by J. J. McMahon for account of L. D. Stickney, Esq.*

K Y	512			
	521			
	506			
	479			
	515			
	503			
	510	461		
	515	483		
	459	944		
	486	5,006		
	5,006	5,950	lbs. *a* 10 ½ c.....	$624 75

Ch'g's.

Freight *a* $1 25.....	15 00	
River ins'ce on $50 *a* ¾ p. c.....	4 50	
Fire do. on $624 *a* ½ p. c.....	3 12	
Drayage, storage, labor, and weighing 50 c.....	6 00	
Commissions on $624 75 *a* 2½ p. c.....	15 62	
		44 24
Net proceeds.....		$580 51

E. E.

J. J. McMAHON,
By D. H. JONES.

New Orleans, May 23, 1856.

NEW ORLEANS, *Mar.* 26, '56.

L. D. STICKNEY, Esq.,

D. SIR: Enclosed you will find ac. sales 96 bales cotton, net proceeds to cr. your office $4,033 $\frac{60}{100}$; also sales 30 bales, net proceeds $1,162 $\frac{66}{100}$, which I hope will be found correct and satisfactory. I was compelled, as Mr. Kirby knows, to hold on to these shipments in order to save you from loss as much as possible. Look at your bill book and see that I am placed in funds to meet my acceptances which are now running to maturity.

Very respectfully,
J. J. McMAHON.

Answer to cross-interrogatories:

Answer 1st. I am not.

Answer 2d. The parties were stockholders in the Cincinnati and

Little Rock Slate Company; I was myself a stockholder for several months, but I disposed of my stock before the bill of exchange in controversy in this suit was signed, and at that time had no connection with the company.

Answer 3d. All the connection that McMahon had with the slate company, within my knowledge, is set forth in my third answer to defendants' interrogatories. His agreement was made with R. M. Kirby, as president of the slate company.

Answer 4th. No money was obtained on the bill of exchange herein referred to; it was given to be used by McMahon to cover his previous advances to the slate company.

Answer 5th. I heard some conversation between McMahon and Kirby, but not in reference to the bill of exchange; it was in the summer of 1856; I do not recollect the substance of that conversation.

Answer 6th. I know nothing further than what I have already stated; and further this deponent saith not.

L. D. STICKNEY.

Answer to cross-examination. 3d interrogatory:

Answer 1st. I only know the fact from letters written by J. J. McMahon to R. M. Kirby, president of the Cincinnati and Little Rock Slate Company, and to myself; after dilligent search I can find but four letters addressed to me, which are herewith filed, numbered 1, 2, 3, and 4.

Answer to 4th interrogatory:

Answer 2d. He was not present, and had nothing to do with the drawing or signing of the bills of exchange.

L. D. STICKNEY.

Further answer to 3d interrogatories:

In addition to what I have stated in my original answer to this interrogatory, I state that I have now before me and file herewith a paper which purports to be a copy of said J. J. Mahon's account against R. M. Kirby, as president of the Cincinnatti and Little Rock Slate Company. I notice charges in said account for fifteen different drafts, amounting in all to say $23,000, stated to be drawn in my favor, and by me on said McMahon, and accepted and paid by him. These drafts were drawn by me, or in my favor, at the instance and request of R. M. Kirby, president of said slate company, in pursuance of an agreement he had made with McMahon to become connected with said slate company as financial agent or treasurer at New Orleans, and were intended to raise money, and put in operation, and carry on a banking business under the charter of the Cincinnati and Little Rock Slate Company at Memphis and New Orleans. McMahon accepted and paid said drafts with a full understanding that the money was to be used for that

purpose. The means of the slate company, as well as the money raised from McMahon on those drafts, were at that time being used by the president, Mr. Kirby, to build up and establish the Memphis and New Orleans banking-house. It was not contemplated to do anything but a nominal business at Little Rock. This was understood by McMahon, and approved by him.

Further answers to 4th interrogatories:

In my original answer to the interrogatories, I stated, in relation to signing said blanks, that it was done at the suggestion of R. M. Kirby to relieve McMahon from True's theft; I have since had repeated conversations with Mr. Kirby and others who were present, and they are all positive that I was mistaken as to the time; Mr. Kirby has called my attention to another time, several days afterwards, when he made the statement. Probably I may have been in error about the time, and that McMahon's was not used at the time of signing the drafts, as Mr. Kirby is positive that the conversation occurred some time afterwards; he is most likely correct; Mr. Kirby is the only one of the parties who signed the bills of exchange that I heard mention McMahon's name in connection with the matter, and he, as far as I recollect, mentioned it but once, and I am quite certain none of the other parties were present.

L. D. STICKNEY.

The defendant then examined William H. Slover as a witness, who testified as follows:

That witness was a resident of the city of Memphis, Tennessee, in the year 1856, and was the keeper of a hotel called the Richmond House; that some time in the last of May or first of June, 1856, the defendants, Thomas J. Davidson, J. B. Ellis, R. M. Kirby, L. D. Stickney, Jos. R. Ferguson, and Josiah Locke, had a meeting at the Richmond House something about the Cincinnati and Little Rock Slate Company. Davidson, Ellis, Locke, and Ferguson signed six bills of exchange and delivered them to Kirby; the bills were all in blank, except the engraved portions, and the signatures, and in that condition delivered to Kirby. The bills were similar in appearance to the one sued on, and witness believes this is one of them. Davidson and Ellis had withdrawn from the company at that time, but loaned those that staid in the use of their names; Kirby was president of the slate company. They had been trying to put a banking office in operation in Memphis. The office was on Madison street. They had put in circulation their bank bills in the city of Memphis, and were redeeming their issues there. Kirby told the other parties that the company would need means to protect the circulation. The parties agreed that they would loan their credit to the company for six thousand dol-

lars to aid Mr. Kirby in raising means to protect the circulation, and they agreed to sign six drafts or bills of exchange in blank, and leave them with Mr. Kirby, to be filled up by him with an amount not exceeding $1,000 each, to be used by him as he might need means to take up the outstanding circulation. Six blank bills were there signed by the parties and placed in Kirby's hands for that purpose. There was no stipulation or agreement made between the parties as to the rate of interest said bills should bear, and nothing written in said bills on the subject at that time.

On cross-examination, witness stated that he did not know that he was present in the room with the parties all the time, or that he heard all the conversation that took place on the subject they were engaged about; that he was proprietor of the hotel, and may have been absent a part of the time attending to his business.

Defendant then introduced as a witness, Jos. B. Ellis, who, it was admitted, was the same person who was one of the endorsers on the bill of exchange sued on, and to whom, as a witness for defendant, on this ground plaintiff objected; which objection was sustained by the court, so far as to hold him incompetent to testify to any matter of defence to said bill, existing previous to his endorsement of said bill, but holding at the same time that said Ellis was a competent witness for defendant, to prove any matter of defence that might have arisen since such endorsement; to which opinion and judgment of the court the defendant excepted at the time, and thereupon defendant examined said witness under said restriction, and proved by him, that in Jan'y or February, 1857, he saw McMahon, plaintiff's intestate, in the city of Memphis, Tennessee, after the defendant, Davidson and himself, had understood that certain bills of exchange which they had, some time in the year 1856, left with R. M. Kirby in blank, for certain specified purposes, and to be filled up with a limited amount; each had by said Kirby been placed in the hands of said McMahon, and after witness and said Davidson had determined that they would notify said McMahon not to fill up or use said blanks, and witness then and there notified said McMahon, on behalf of himself and said Davidson, that he, McMahon, must not fill up said blanks, as Kirby, without authority, had placed them in his hands.

Defendant then asked said witness what he had at the same time told said McMahon, as to the purpose for which defendant and himself had left said blanks with said Kirby; to the answering of which question the plaintiff, by his counsel, objected, on the ground that any statements the witness may have made to said McMahon on that subject, were incompetent and illegal as testimony in the premises in defendant's behalf; which objection was sustained by the court, with the qualification, that the witness might state anything then said by McMahon to him, and to the opinion and judg-

ment of the court in sustaining said objection, defendant, by his counsel, excepted at the time.

Defendant then offered to be sworn as a witness, and to testify in the cause, under the statute of the State of Mississippi in such cases made and provided, but to his competency as a witness the plaintiff, by his counsel, objected, which objection was sustained by the court, and to the opinion and judgment of the court in sustaining said objection, the defendant, by his counsel, excepted at the time.

Defendant then read, as evidence before the jury, the letters following, which it was admitted were in the handwriting of plaintiff's intestate, and were by him written and sent to the persons to whom they are severally addressed:

NEW ORLEANS, *Mar.* 19, '56.

L. D. STICKNEY, Esq.

D. SIR: I have to advise of the sale of the shipment 96 bales cotton, at 9⅛ c. It was hard work to make this cotton pay out. Mr. Kirby saw it, and knows all about it.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *Ap'l* 1, '56.

R. M. KIRBY, Esq., *Pres't.*

D. SIR: You will find from the ac's sales ren'd Mr. Stickney, that *you* office owes me a cash balance of upwards of $500. This am't includes $100 redeemed notes. I herewith send you dates my several acceptances, maturing this month.

Very respectfully,

J. J. McMAHON.

R. M. Kirby,	pr. L. D. Stickney,		17–20	$1,000
"	"	"	"	1,000
"	"	"	18–21	1,000
"	"	"	21–24	1,000
				$4,000
"	"	"	5–8 May	1,000
"	"	"	18–21 "	1,000

NEW ORLEANS, *Ap'l* 3, '56.

L. D. STICKNEY, Esq.

D. SIR: I am in rec'pt your favor 29th Mar., enclosing check on Bank New Orleans for six hundred dollars, which am't is to cr. your office. I have this day accepted R. M. Kirby's (pres't) draft for $1,000, at 60 d., from 29th Mar.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *April* 7, '56.

R. M. KIRBY, ESQ., present.

D. SIR: Your despatch 3d is just to hand; if you have no other bills than those entered falling due this month, the 75 bales pr. Ingomar will in and about pay the acceptances of $1,000—say $3,000—due 17–20, 18–21 and 21–24. I sent you a statement a few days since. Since then I have accepted draft $1,000, due 28–31 May; and this day, draft $3,000, 30–3 July. I would suggest, if you can buy "New Orleans," middling at 8½c. with your bank notes, that it will pay.

Very respectfully,
J. J. McMAHON.

I would suggest that you have your notes redeemed by the Union Bank; it will give the notes credit from home and not be so liable to be sent forward.

McM.

L. D. Stickney's despatch, 2d, rec'd 4th, stated he "had shipped 240 bales this day." As *yest* only 75 rec'd.

COURTLAND, *July* 25, '56.

R. M. KIRBY, ESQ.

D. SIR: Your favor of 22d is to hand by this morning's mail. I found Fortunatus quite ill with the flux, on my arrival at home. Had he been well it was my intention to have started for Memphis on Monday last, for the purpose of bringing my unfortunate matters there to a close; and if that could not be done I intended bringing suit to the first court; I am heartily tired of promises, and have no faith in Mr. Locke's remitting me a dollar; when he does, I will with the greatest pleasure advise you of the receipt. I would prefer his making the remittance to me direct to this office. I wish you so to advise him; I will then know that it has been made. I wish you would ascertain from A. C. Blair what arrangement he designs making for his draft—$2,000—due and paid 26th June. I wrote to the parties twice, and they did not have even politeness enough to answer my letters. Mess. Aydlites advised me that Ferguson had not placed me amongst the preference creditors, as you thought, and they feared I would not be reached at all. You say you have not heard from him for a month. He will land in the penitentiary some day, if he gets his just deserts, and the sooner the better, for , if I am allowed to judge by his conduct for the last few months. William received the mattress. Advise me what progress is making in the Missouri estate matter. I think it would be well for me to fill up all of the drafts you sent me for my protection, and let them go to protest. What say you?

Very respectfully,
J. J. McMAHON.

NEW ORLEANS, *Dec'r* 13, '56.

R. M. KIRBY, ESQ.

D. SIR: I have not had the pleasure of hearing from you since I left Memphis. I remained at Courtland some ten days after I wrote to you of my return. I am in receipt of a letter from J. Locke, dated 1st Dec'r, in which he says, "That he cannot remit me until after 1st Jan'y." I presume this is on a'c of the Blair draft, although he don't say so. Unless I hear from you satisfactorily in a short time, I must use the drafts you remitted me last summer. I want the money badly; can't do without it any longer.

Very respectfully,

J. J. McMAHON.

NEW ORLEANS, *Feb'y* 9, '57.

R. M. KIRBY, ESQ.

DR. SIR: Your favor 28th Jan'y came to hand by this morning's mail. I received a letter from Davidson & Ellis some days since, in which they deny that you had the right to use the drafts sent to me. They state that they had agreed to endorse for some $5,000 or $6,000, which they had done to Cherry, and that they would resist the payment of the drafts held by me. As a last resort I will start a young man up on the Ingomar to see what he can get out of Locke on this and the Blair draft; as soon as he returns I will report what has been done.

I see no use in my waiting any longer; and as soon as Lyon returns I will send up my claims for collection. I wrote to Davidson & Ellis in reply to their letter, in which I stated that I would sue all the parties, both on the drafts and the notes; the costs will be very heavy on the latter; but I don't think they can go into and quit a concern without a publication in the papers. I wish you would call and see what I did say to them. Doct. Ellis may feel disposed, as you state, to make a settlement; this he denies in the letter of Davidson & Ellis. If I am compelled to sue I will have to go the whole figure and include L. D. Stickney, H. Martin True and R. C. True. I have the copy of the resolutions passed 25th Jan'y, '56, when they sent you down to make arrangements to carry on the bank.

Very respectfully,

J. J. McMAHON.

The foregoing was all the testimony in the cause; and thereupon the court charged the jury as follows:

1st. If the jury believe from the evidence that McMahon's object in advancing his money was to enable the company to do an unlawful act, (and the putting into operation a banking company to issue or circulate bills, in violation of the act of the Tennessee Legisla-

ture of 1827, was an unlawful act,) then the jury must find for the defendant.

2. If the agreement between Kirby and McMahon was an agreement by which McMahon agreed to redeem the circulation or issues of this company, to be put in circulation at Memphis, thereby intending to enable the company to go into operation as a banking company at Memphis, and in pursuance of such agreement the company went into operation, issuing bank notes in pursuance of the agreement so made with McMahon to redeem them, then the transaction is illegal and you should find for the def't.

3d. If, however, after the company had gone into operation, the bills sued on were received by McMahon for the purpose of enabling the company to continue or keep up their business, this knowledge of the use intended to be made of the money did not vitiate the bill, and you will find for the plaintiff, unless the defence is sustained on some other ground.

4th. If the bills were not given for an unlawful purposes, viz: to put in operation a banking company in violation of the law of Tenn., the jury will find for the plaintiff, unless the defence is sustained on some other ground.

5th. If at the time the bills were given, the holder, McMahon, knew that the money would be used for the purpose of carrying on a banking company, contrary to the laws of Tenn., and if the banking company was then in operation, then the consideration of the bills is not affected by the use made of the proceeds of the bill, and the plaintiff is entitled to recover, unless the defence is sustained on some other ground.

6th. The signing of a bill of exchange in blank is the giving of the holder an unlimited authority to fill it up at pleasure, and the party so drawing, or endorsing, is bound by the act of the party filling up the same.

7th. If the bills sued on were signed in blank and delivered to Kirby to be sent in blank to McMahon, that would authorize him, McMahon, to fill up the bills and insert any rate of interest that was lawful, the jury should find for the plaintiff, unless the defence is made out and sustained on some other ground.

8th. But if the jury believe from the testimony that the bills were delivered in blank to Kirby, without any understanding that they were to be sent blank as they were to McMahon, then McMahon had no right or authority to fill them up and you should find for the def't.

9th. If the bills went into the possession of McMahon according to agreement in blank, without any specification as to interest, then McMahon had a right to insert any rate of interest lawful in the State of Louisiana, where the bills sued on in this case were filled up, and any rate of interest, from five to ten, is legal by

contract in Louisiana, and McMahon had a right to insert 8 per cent. as part of the contract if, as I have already said, he received the bills by consent of the defendant without any stipulation as to interest.

10th. After McMahon received these bills, if he did so in blank, by the consent of deft, and came under liability for the company in consideration of said bills, then the defendant could not revoke his authority to fill up the bills and have them protested.

11th. If the bills went into the hands of McMahon in blank, by consent of defendant, to protest him against liabilities that he was then under or might thereafter come under, for the company to whom they were loaned by the defendant, then McMahon had a right to fill them up for an amount equal to his liabilities.

12th. A bona fide holder is one that takes a bill or note in the due course of trade for a valuable consideration, without notice of any fact tending to show that the bill was illegal in its inception.

13th. But in this case, gentl., if McMahon received the bills in blank, with the agreement that he was to use them to indemnify himself, he had a right to do so.

14th. If the paper had been placed in the hands of Kirby to be used to indemnify or save harmless the pl'ff by the use of the paper sued on, then when the paper came into the hands of the plaintiff, McMahon, he had a right to fill them up for an amount that would so protect him from liability. If the paper then was so made and delivered to Kirby, and it was intended to protect McMahon, then you should find for the plaintiff.

15th. But if the paper was made for the purpose of taking up the circulation of this bank, and this fact was known to McMahon before he filled up the bills, or at the time he received them, then he had no right to use them, the bills of exchange, for any other purpose, and if he did so, you should find for the deft.

16th. Kirby being one of these parties, and as such a delivery of these bills to him by the other partners was not a competent delivery, and the delivery did not take place until the paper passed out of his hands, if at the time then that Kirby delivered the bills to McMahon, he, Kirby, delivered them to him to be used to protect himself from liability for these parties, then he had a right to fill them up for such an amount as would so indemnify himself, not amounting, interest included, to a greater sum than his liability for this company, and if it was done.

17th. If you believe, from the testimony, gentl., that this bill, with others, was left by the parties with Kirby, who was one of this company, to be delivered to McMahon, the pl'ff's intestate, and that the bills so left with Kirby *was* by him, whilst they were still in blank, delivered to McMahon to protect him against his liabilities for this company, he had authority to fill up the bill sued on for an amount sufficient to indemnify him vs. his liability for the company.

To the giving of the third, fourth, fifth, sixth, seventh, ninth, tenth, eleventh, thirteenth, sixteenth, and seventeenth of said charges the defendant objected at the time and before the jury retired from the bar; the said defendant alleging that the said charges did not truly, correctly, and fully expound the law applicable to the facts in proof before the jury, but that each of said charges, and all of them, were by the facts in proof before the jury were inapplicable to the facts of the case, and were erroneous and not correct expositions of the law applicable to the facts in proof. And, moreover, that said charges, and each one of them, were uncertain and indefinite and calculated to mislead the jury.

After the foregoing charges had been given by the court, the defendant moved the court to amend or modify the fifteenth of said charges so as to read as follows, to wit:

"But if the paper was made for the purpose of taking up the circulation of this bank, and this fact, or any other fact, calculated from its nature or character to put said McMahon upon inquiry as to the purpose for which said blanks were signed, was known to McMahon before he filled up the bills or at the time he received them, then he had no right to use them, the bills of exchange, for any other purpose, and if he did so you should find for the defendant."

Which amendment or modification the court refused to make or give, but left the said fifteenth charge as originally given, to which opinion and judgment of the court in refusing to make or give said modification the defendant excepted at the time.

The defendant then, by his counsel, moved the court to charge the jury as follows, to wit:

That if the jury believe from the evidence that the bill of exchange sued on was signed in blank by the defendant, and by him delivered to Kirby, under an agreement between Kirby and defendant, and the other parties signing said bill at the time, that they were to be filled up by Kirby for the purpose of raising means to protect the circulation of the bank; and that afterwards, without the consent of the defendant, Kirby delivered said blank bill of exchange to McMahon, pl'ff's intestate, to be used by him for a purpose different from that for which defendant had intrusted it to Kirby; then said McMahon, though he may not have known of the specific purpose for which defendant had placed said blank in Kirby's hands, was not the agent of defendant, and had no authority to fill up said blank bill for his own benefit, and they must find for defendant. The court refused to give this charge to the jury, to which refusal the defendant at the time, in open court, excepted.

And to save the benefit of each and all of the foregoing exceptions, the defendant tendered in open court this his bill of exceptions, and prayed that the same might be signed and sealed by the court,

and be made a part of the record of the case; which is accordingly done.

S. J. GHOLSON. [SEAL.]

And afterwards, to wit, on the 7th day of June, 1860, the defendant filed his writ of error bond in the cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Mississippi, sct.

Know all men by these presents, that we, Thomas J. Davidson and James B. Ellis, are held and firmly bound unto W. L. Lanier, curator of J. J. McMahon, dec'd, just and full sum of twenty-three thousand dollars, lawful money of the United States, to be paid to the said W. L. Lanier, curator of said John J. McMahon, lawful attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 7th day of June, A. D. one thousand eight hundred and sixty.

The condition of the above obligation is such, that whereas at a term of the district court of the United States for the northern district of Mississippi, commenced and held at the town of Pontotoc, on the first Monday of June, A. D. 1860, judgment was rendered by said court in favor of the said W. L. Lanier, curator of John J. McMahon, dec'd, against the said Thomas J. Davidson, for the sum of eleven thousand three hundred and twelve dollars and 42 cents, and costs of suit, and the said Thomas J. Davidson hath sued out a writ of error from the Supreme Court of the United States, to reverse said judgment: Now, if the said Thomas J. Davidson shall prosecute his said writ of error to effect, and shall well and truly pay and satisfy the amount of said judgment, and all such damages, interest, and costs as the said Supreme Court of the United States shall adjudge in the premises, if he, the said Thomas J. Davidson, shall fail to make his plea good, then and in that case this obligation to be void; otherwise to remain in full force and virtue.

THOMAS J. DAVIDSON, [SEAL.]
J. B. ELLIS. [SEAL.]

Sealed and delivered in presence of—
S. J. GHOLSON,
Judge U. S. D. C. for Miss.

Filed June 7th, 1860.

R. W. EDMONDSON, *Cl'k.*

Writ of error is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judge of the District Court of the United States for the northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between W. L. Lanier, curator of John J. McMahon, dec'd, and Thomas J. Davidson, a manifest error hath happened, to the great damage of the said Thomas J. Davidson, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the 84th year.

Issued the 7th day of June, A. D. 1860.

R. W. EDMONDSON,
Clerk of the District Court of the United States for Northern Dist. of Miss.

Upon which said writ of error is the following endorsement, to wit:

A copy of the writ of error lodged in pursuance of the statute of the United States in such case made and provided, for the above named W. L. Lanier, curator, &c., defendant in error, June 7th, 1860.

J. W. C. WATSON and
O. DAVIS,
Att'ys for Pl'ffs in Error.

Citation is in the words and figures following to wit:

UNITTD STATES OF AMERICA, *ss.*

To W. L. Lanier, curator, &c., or H. R. Miller, Esq., his attorney of record, greeting:

You are hereby cited and admonished to be and appear

at a Supreme Court of the United States, to held at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Mississippi, wherein Thomas J. Davidson is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l J. Gholson, judge of the district court of the United States for the northern district of Mississippi, this 7th day of June, in the year of our Lord one thousand eight hundred and sixty, and in the 84th year of the independence of the United States.

S. J. GHOLSON.

UNITED STATES OF AMERICA,
Northern District of Mississippi.

I, Robert W. Edmondson, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the foregoing sixty-one pages contain a full, true, and perfect transcript of the original papers and proceedings filed and had in the cause therein stated as fully and completely as the same remain of record, and on file in my office; also of the writ of error bond, writ of error, and citation, and the endorsements of the judge and clerk thereon.

In testimony whereof, I, Robert W. Edmondson, clerk of said court, have hereunto set my hand and affixed the seal of said court, at office, in Pontotoc, this 14th day of Sept., A. D. 1860. [SEAL.]

R. W. EDMONDSON, *Clerk*.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Judge of the District Court of the United States for the Northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between W. L. Lanier, curator of John J. McMahon, dec'd, and Thomas J. Davidson, a manifest error hath happened, to the great damage of the said Thomas J. Davidson, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and

proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year [SEAL.] of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the 84th year.

Issued the 7th day of June, A. D. 1860.

R. W. EDMONDSON,
Cerk of the District Court of the United States for Northern Dis't of Miss.

Citation.

UNITED STATES OF AMERICA, *ss.*

To W. L. Lanier, curator, &c., or H. R. Miller, Esq., his attorney of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Mississippi, wherein Thomas J. Davidson is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l J. Gholson, judge of the district court of the United States for the northern district of Mississippi, this 16th day of April, in the year of our Lord one thousand eight hundred and sixty, and in the 84th year of the independence of the United States.

S. J. GHOLSON.

Filed 8th December, 1860.

SUPREME COURT U. S.—No. 51.

DAVIDSON vs. LANNIER.

Brief of Deft. in Error on Motion to Dismiss.

CASE No. 51.

To found the appellate jurisdiction of this Court, the original Writ of Error and citation must be returned to this Court, because they are no part of the proceedings in the Court below, and are required to show that the case is properly brought up.

Wilson *vs.* Daniel, 3 Dall, 401.

In this case, the judgment was finally rendered 6th June, 1860—Record, 7, 8.

On 7th June, 1860, the Writ of Error was lodged in the Clerk's office, but it does not appear to have been allowed by the Judge—Record, 41, 42.

The original citation is dated 16th April, 1860, (before this judgment,) and was served on 14th September, 1860.

There is also in the Record a copy of a citation, issued on 7th June, 1860, but which does not appear to have been served.

The appeal bond in this case is in the penalty of $23,000, and was designed as a supersedeas. It is filed on same 7th June, 1860, and is witnessed by Judge Gholson, but not approved, un-

less such approval is to be inferred from the fact of witnessing signatures to a paper which the Judge may have never read.

The grounds for the dismissal of this case are—

1st. Because the Writ of Error is not "allowed" by the Judge.

7 Peters, 221.

2d. Because the citation certified as part of the Record, and dated 7th June, 1860, was never served, and is therefore to be taken as no citation.

1 Cranch Rep. 365.

Nor can a copy of the citation be regarded.

3 Dallas, 401.

3d. Because the citation returned here as the original, which was served on 14th Sept., 1860, is on its face tested 16th April, 1860, nearly two months prior to the judgment, which it claims to bring up.

This citation, when served, notified the Defendant in Error to appear and answer a Writ of Error, filed at its date, (16th April, 1860.) No such Writ of Error had then been filed in this case, nor indeed had the judgment been rendered.

On the 16th April, 1860, when this citation bears date, there was a judgment in same Court, dated 5th Dec. 1859, being the judgment in case No. 52, and it is properly described in this citation. The Defendant in Error, when served with this citation, would naturally suppose from its date that it was intended to relate to the only judgment then existing. There was nothing on the face of the citation to apprise the Defendant in Error that he was cited to defend the judgment of 6th June, 1860, but every thing to mislead him into the belief that it was the judgment of 5th Dec., 1859, that was to be carried up.

This citation of 16th April, 1860, refers to a Writ of Error then filed. No such Writ was then filed in either case, though the one issued in case No. 52 is tested 1st Monday of Dec., 1859, and does not show the date of its issue, but it was not filed until 17th May, 1860. See Record in No. 52, p. 57.

If the object of the citation is to notify the Defendant in Error of a Writ of Error having issued on a particular judgment, it is the fault of the Plaintiff in Error to rely on a citation which, from the date of its issue, could only be understood as relating to a pre-existing judgment between same parties and in the same Court of 5th Dec., 1859. It is no answer to say, that the citation was erroneously dated 16th April, 1860, and should have been 7th June, 1860. If such a mistake could be excused in any case, it certainly ought not in a case like the present, where there was already a pre-existing judgment, fully and fairly described in that cifation of 16th April, 1860.

Nor has this Court the power to amend any proceedings on which their jurisdiction depends, even if it be a clerical misprision manifestly.

22 Howard, 88–9.

To allow it now to operate and be considered as a citation designed to cover a judgment rendered two months after its apparent date, would wholly mislead the Defendant in Error and deprive him practically of the benefit of being cited in unmistakeable terms to defend the last of the two judgments he had obtained.

It is true that on the 22d August, 1860, the Defendant in Error had been served with the citation returned in No. 52, but when he was again served in September, 1860, with another citation, dated at a time when he had recovered but the one judgment, viz. the one of the 5th Dec., 1859, what could he suppose but that the Plaintiff in Error had abandoned the first citation served in that case for some informality, and was proceeding to serve an *alias* citation in the same case?

He would be confirmed in this idea if he examined the Writ of Error and citation certified as of the 7th June, 1860, in the Record of this case, No. 51.

If these views are correct, then there has been no citation served in case No. 51, (this case.)

4th. The appeal bond returned in this case was designed to be a *supersedeas* from the amount of its penalty, &c.—see p. 40.

In such a case, the Judge signing the citation is required to "take good and sufficient security that the plaintiff in Error shall prosecute his suit with effect," &c. See 22d Sec. of Judiciary Act.

But here it does not appear that the Judge approved the bond or exercised any judgment touching the security. As attesting witness, he may not have even known its contents, or that it was an appeal bond, He merely authenticates the signatures.

In the case of a *supersedeas* appeal bond, where it does not appear to have been taken or approved by the Judge, the Writ of Error must be dismissed.

6 Peters, 777.

Judge Gholson expressly approved the appeal bond in case No. 52, while he fails to approve this.

See Record, No. 52, p. 56.

On the merits, if the motion to dismiss does not prevail.

The suit below was for money paid, &c., and the evidence shows that the Defendant in Error paid large amounts in taking up bills of exchange drawn by the Plaintiff in Error and his associates on him.

See narr, p. 2–3.

The issue of fact on the first plea in abatement, was found for the Defendant in Error, and the demurrer of the Defendant in Error to the second plea in abatement of the Plaintiff in Error being sustained, he pleaded over and filed the general issue.

Record, p. 5.

The whole defence rested on the statute of Tennessee, (1827, ch. 85,) and is set forth in the Defendant's second plea.

Record, p. 6.

The evidence shows that Mr. McMahon, (on whose estate Lanier is curator,) residing in New Orleans, agreed to accept the drafts of a banking house in Memphis, Tenn., and this action is brought for the money paid in New Orleans by McMahon.

Record, p. 11, &c.

The place of performance of McMahon's contract, therefore, was Louisiana, and its validity is to be tested by the laws of Louisiana and not of Tennessee.

Story, Conflict of Laws, §239.
Bell vs. Bruen, 1 How., 169.
Cox vs. U. States, 6 Peters, 172.

If this be so, the whole defence of the Plaintiff in Error was inadmissible.

But the law of Tennessee manifestly intended to punish *only* the parties engaged in the institution of an unincorporated association and in issuing its currency; it never intended to prohibit the recovery of money paid in good faith by a non-resident of that State upon the security of bills of exchange drawn on him by *individuals*, and which he honoured for their accommodation.

The contract to pay for money advanced upon personal secu-

rity is valid, although the occasion for this contract arose out of the illegal act.

Armstrong vs. Toler, 11 Wheat, 258.
McBlair vs. Gibbes, 17 How., 232.

Especially see the cases of
Catts vs. Phalen, 2 How,, 376.
Slaughter vs. Groves, 15 Pet., 449.

We see nothing to complain of in the charge of Judge Gholson; it gave the Defendant, below, more than he ought to claim.

But it will be seen that only *two points* in the charge were excepted to.

Record, p. 39.

Both these exceptions are untenable on their face.

Respectfully submitted,

R. J. BRENT.

For Defendant in Error.